



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

September 21, 1993

Mr. Norbert J. Hart
Assistant City Attorney
City of Corpus Christi
P.O. Box 9277
Corpus Christi, Texas 78469-9277

OR93-570

Dear Mr. Hart:

You request a reconsideration of Open Records Letter No. 92-582 (1992), in which this office determined whether certain information was subject to required public disclosure under the Texas Open Records Act (the "act"), Government Code chapter 552.¹ Your request for reconsideration was assigned ID# 18667.

In Open Records Letter No. 92-582, we concluded that some of the information submitted to us for review constituted "advice, opinion, or recommendation" and thus was excepted from required public disclosure under section 552.111 (former section 3(a)(11)) of the act. We also concluded, however, that you had not established the applicability of section 552.111 to other information and that we therefore had no basis upon which to conclude that it was excepted from disclosure. Because the decision in *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408 (Tex. App.--Austin 1992, no writ) required reexamination of the section 552.111 exception, we allowed you an additional 15 days to submit arguments in accordance with the *Gilbreath* decision. We now consider the additional arguments you have submitted for withholding the requested documents under section 552.111 of the act, as well as your request for a reconsideration of our ruling in Open Records Letter OR92-582 with respect to exhibits A, B, and C.²

¹We note that V.T.C.S. article 6252-17a was repealed by the 73d Legislature. Acts 1993, 73d Leg. ch. 268, § 46. The Open Records Act is now codified in the Government Code at chapter 552. *Id.* § 1. The codification of the Open Records Act in the Government Code is a nonsubstantive revision. *Id.* § 47.

²You advise us that Exhibit D has been made available to the requestor.

Section 552.111 excepts "interagency or intraagency memorandum[s] or letter[s] that would not be available by law to a party in litigation with the agency." In Open Records Decision No. 615 (1993) (copy enclosed), this office reexamined the section 552.111 exception in light of the *Gilbreath* decision and held that section 552.111 excepts only those internal communications consisting of advice, recommendations, opinions, and other material reflecting the policymaking processes of the governmental body at issue. An agency's policymaking functions, however, do not encompass internal administrative or personnel matters; disclosure of information relating to such matters will not inhibit free discussion among agency personnel as to policy issues. *Id.* at 5-6. In addition, section 552.111 does not except from disclosure purely factual information that is severable from the opinion portions of internal memoranda. *Id.* at 4-5. In accordance with Open Records Decision No. 615, we conclude that the documents you have submitted for our review pertain to the policy functions of the city. However, some of the information contained in these documents is purely factual. We have marked those portions of the documents that may be withheld from required public disclosure under section 552.111. The remainder of the requested information must be released.³

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please contact this office.

Yours very truly,



Angela M. Stepherson
Assistant Attorney General
Open Government Section

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³In your request for reconsideration, you also claim that the requested information is excepted from disclosure by section 552.107 (former section 3(a)(7)) of the act. You did not raise the section 552.107 exception in your original request for a ruling. Open Records Decision No. 574 (1990) held that the protection of section 552.107 is limited to information that reveals client confidences to an attorney or that reveals the attorney's legal advice. Information that does not contain legal advice or opinion or reveal client confidences is not protected by section 552.107. *Id.* Most of the information that we have marked as excepted by section 552.107 also constitutes legal advice that would be excepted from disclosure under section 552.107. The factual information that we have concluded may not be withheld under section 552.107, however, does not reflect the legal advice of an attorney. In addition, you have not explained, nor is it otherwise apparent, that this factual information would reveal client confidences if released. *See* Open Records Decision No. 589 (1991). Therefore, this information would not be excepted from disclosure under section 552.107.

Enclosures: Open Records Decision No. 615
Marked documents

Ref.: ID# 18667
ID# 19159

cc: Mr. Ed Mange
2705 Lipan
Corpus Christi, Texas 78408
(w/o enclosures)